RECENT RAILROAD COMMISSION LEGISLATION.

NOT since the passage of the Interstate Commerce Act has so much attention been given by the people at large to the "railroad question" as during the present year. President Roosevelt's vigorous stand for an Interstate Commerce Commission with powers adequate for the performance of its duties, was the opening work in the discussion. For the hastily prepared measure which was rushed through the House, the Senate substituted a committee to take testimony. The sessions of the Elkins committee provided the opportunity for a general expression of opinion on the question of railroad control, including the views of railroad men, shippers and students of the problem. The report of this committee, now in preparation, promises to take rank with the Windom and Cullom reports, and will make the railroad question one of the most important before the country in the coming session of Congress.

But the attention of the people has not been turned toward questions of interstate commerce alone. The state legislative sessions of this year have been unusual in the amount and character of the legislation introduced and enacted, which has aimed to give greater control to the states over transportation agencies, especially in the matter of charges. This legislation has been most abundant in the western states, where the industries are more largely extractive and the mass of the people feel more keenly and personally the burden of inequitable railroad service. In this section, too, the people are perhaps more ready to embody their feelings of injustice in legislative enactments.

An exhaustive examination of all the legislation of this character introduced at the recent sessions of the state legislatures would be wearisome and unprofitable, but the more important acts deserve mention. Missouri enacted a maximum freight-rate bill and one relating to the classification of freight; railroad commission bills passed one house in both Idaho and Col-

orado; in Oklahoma a commission bill which combined features of the Texas and Kansas laws failed through non-concurrence of the two houses in amendments; in Nebraska one attempt was made to create a railroad commission, and another to restore the Board of Transportation abolished in 1901, but both failed, and in their place a constitutional amendment was submitted to the people for the creation of an elective railroad commission. In Montana a commission bill failed to become a law through the governor's veto; in New Jersey a bill providing for a supervisory board was introduced; and bills were under discussion in Iowa and West Virginia.

Finally, acts were passed in four states, Washington, Indiana, Kansas and Wisconsin, providing for the creation of state railroad commissions. It is the purpose of this article to consider these four measures and to point out their significance in relation to the problems of railroad control now so widely discussed. In Washington and Indiana no legislation of this kind has ever been enacted before. Such slight control as has been exercised heretofore over railroads in these commonwealths has proceeded from the general railroad law common to all states. In Indiana the Grain Dealers' Association two years ago presented a bill to the legislature, but failed to secure its enactment. Their defeat led to a more thorough organization of the forces interested in the movement, and in 1904, the Indiana Shippers' Association was created, containing representatives of thirty commercial organizations. This influential body secured a pledge in the platforms of both parties for an improvement in transportation conditions; both candidates for governor expressed themselves favorably, and pledges were secured from candidates for the legislature. When they found the legislature nearly unanimous for a change, the railroads went into a conference with the shippers, and after a three days' session a bill was drawn up which passed both houses of the Indiana legislature with only two dissenting votes.

Kansas has had a much wider experience with legislation of this character. A railroad commission was created there in 1883 which continued in existence for fifteen years. It was appointed by the executive council and had power to investi-

gate cases, to discover violations of law and to inspect railroads at its discretion. It had no power to prescribe rates except upon complaint. One of the last acts of the Populist legislature in 1898 was to abolish this board and substitute for it a so-called Court of Visitation, consisting of a chief judge and two associate justices, whose duties covered cases pertaining to rates and traffic and to the physical condition and technical operation of railroads. This august body was disposed of by the state supreme court in a decision which held the act creating it void on the ground that in it "legislative, judicial and administrative powers are so inextricably interwoven as to render their separation impossible." In 1901 another commission law was passed almost identical with that in existence up to 1898. This law has now been amended to such an extent as to constitute practically a new act.

Railroad control in Wisconsin began in 1874 with the passage of the famous "Potter law," under which a definite schedule of rates prescribed by the legislature was to be administered and enforced by a commission of three men. The law proved to be so stringent and so ill-adapted to the industrial conditions of the state that it was repealed in 1876, and a single commissioner, elected by the people, was substituted, with general supervision of railroad service. The commissioner might receive complaints and try cases and had the power to issue subpœnas and administer oaths, to examine witnesses and to inspect books and papers. It was his duty to discover violations of railroad law and to inspect, at his discretion, the operation and equipment of railroads. But he had no power over rates, and such decisions as he rendered in his limited field could be enforced only through appeals to the attorney general or, still more indirectly, through reports to the governor. It is needless to say that railroads were little interfered with in matters which vitally concerned the industrial interests of the state. The commission law recently enacted is the outcome of Governor LaFollette's campaign for a reform in the railroad tax laws and an increase in the tax levy. He found that the railroads would probably meet the demand for an increase in the amount of tax by an increase of rates.

Therefore he introduced into the legislature of 1903 a very stringent act based on that of Iowa, providing for the creation of a railroad commission with power to prescribe a schedule of maximum rates. This was followed by a special message to the legislature which included a detailed study of rates in Wisconsin, in comparison with the commission-made rates of Iowa and Illinois. The result showed that the rates of Wisconsin were from 25 per cent to 50 per cent higher than those of either of the other states. The bill passed the House, but was defeated in the Senate by a powerful lobby, consisting of railroad officials, manufacturers and shippers. Then followed an interesting campaign of education. The governor continued his investigations into the rates of Wisconsin and adjoining states, he spoke at almost every county fair in the state and appealed directly to the people in an endeavor to strengthen and crystallize the reform sentiment. The railroads met these appeals with arguments and addresses prepared by their attorneys and traffic experts. They were aided by a large number of the manufacturers and shippers, who insisted that a commission empowered to fix rates would have in view absolute equality and would be compelled to adjust rates on the basis of distance, thus depriving shippers of the advantages derived from commodity rates under which raw material could be secured advantageously and markets could be controlled. The governor replied that the support of the shippers was won either through intimidation or through secret rates and rebates, and that the welfare of the people as a whole demanded the abolition of all personal discriminations and preferences. The governor in this same year quietly pushed through an act authorizing the railroad commissioner to examine the books of the railroads, in order to determine whether the state had been defrauded of tax payments. According to the administration, this examination accumulated an enormous amount of evidence of the payment of commissions and rebates to favored shippers. Whether these disclosures influenced the shippers to withdraw their opposition, or whether they simply realized that the sentiment was too strong to be resisted, is uncertain. But the fact remains that when the railroad commission bill was again intro-

duced in January of this year, the shippers' lobby was absent. The measure in its original form was a stringent one, but it was much modified in the course of its long and arduous passage through the two houses, and the act as finally passed is so reasonable and conservative that it can hardly be altogether satisfactory to its more radical supporters.

Turning now to the four laws under discussion, there are a number of significant features worthy of consideration, The method of choice of the members of the boards is interesting and instructive when considered in connection with its historical development. Kansas elects its commissioners at its biennial elections. The other three states provide for appointment by the governor. In Indiana and Wisconsin the governor may remove any commissioner for cause after a public hearing; in Washington the governor's power of removal is absolute. Fifteen years ago appointment of commissioners was much more common than election, nineteen of the twenty-eight states securing their commissions in this way; only six were elected by popular vote.[1] But during the next twelve years the practice was greatly changed. The special report of the Interstate Commerce Commission on state regulation in 1902 shows that out of a total of thirty commissions, fifteen were elected by the people and only fourteen were appointed.[2] This change was brought about by modifications in the laws of some of the western and southern states and by the adoption of the elective method in most of the new laws. It is but an expression of the desire of the people to have a more direct part in the selection of their officials, and the practice is found more generally in the less conservative communities of the west and south. That such a policy is out of harmony with the most efficient administration of railroad matters no student of administrative problems will hesitate to affirm. Experience has shown that the election of railroad commissioners on the state ticket has brought the railroads into politics in a most objectionable way, embittering the relations of railroads and people to the detriment

[1] Two were chosen by the legislature and one was *ex-officio*.

[2] One was chosen by the legislature.

of interests for which the commission is created, and giving rise to charges of bribery and corruption of a most serious character. To have the commissioners appointed by the governor, who is personally responsible for his choice to the people of the state, unquestionably makes for the most efficient service. The chances of securing capable men are far greater through appointment than through choice by the nominating conventions of the political parties. It is therefore encouraging to find three of the four new laws providing for this method of selection, and that, too, in states whose populations would hardly be classed among the most conservative in the country. In fact, so unfalteringly did Governor LaFollette stand for this principle that he threatened to resign the office of governor and become a candidate for railroad commissioner in case the elective method (advocated, as he maintained, by the railroads) should be adopted. In this connection it is interesting to observe that the governor of Montana vetoed the commission bill this spring because the act itself as framed by the legislature named the commissioners and made no provision for removal. The governor held that the appointing power should rest with the executive.

Another encouraging feature which reveals itself in these laws is the change in the length of term of the commissioners. In Indiana the term is four years; in Wisconsin and Washington it is six years. Kansas, on the other hand, with the elective method, prescribes a two-year term. In 1890 twelve states prescribed two-year terms; seven, terms of three years; and nine, four years and over. In 1902 the number of states prescribing two-year terms had fallen to nine; six prescribed three years; and fifteen, four years or more. It must be apparent to anyone that a commissioner with a two-year term is retired at just the time that he is entering upon his period of usefulness. He becomes valuable to the state in the intricate problems of his office only after a long apprenticeship.

When we recognize the importance of the problems which the railroad commissioners are called upon to solve and the intense interest which the people of so many states have taken in the establishment of commissions, it is astonishing that so

little provision is made in the laws themselves to secure men with the proper qualifications for the office. The American people, and particularly the people of the West, are too apt to think that any morally responsible man of the requisite age is competent to hold any public office. The limitations placed upon the office of railroad commissioner are usually of the most general kind. It is common to require that he shall not be interested financially or be an officer in any railroad corporation, that he shall be a qualified elector and a resident of the state. Some states require that both political parties shall be represented in the board, and occasionally it is stipulated that one member shall be a civil engineer. In the four laws under discussion, no requirements beyond these are found except in the law of Wisconsin, which contains the following: "One shall have a general knowledge of railroad law; each of the others shall have a general understanding of matters relating to railroad transportation." This is delightfully indefinite, and almost suggests that the clause was introduced by some legislative wag. But it is at least a move in the right direction. While the danger of securing incompetent men is lessened under the system of appointment, yet there is no reason why the acts themselves should not contain such provisions as will limit the appointing power to the choice of men peculiarly fitted for their difficult task.

In the power granted to the commissions over rates, these four laws are all thoroughly conservative. In no one of them is power given to the commission to prescribe a classification and complete schedule of rates, but in every case the power is limited to the correction of individual rates. The most common form of the law in the past has been that which made it the duty of the commission to prescribe a complete schedule of rates for all traffic within the state. Seven states had this form in 1890 and thirteen in 1902, and most of the recent commissions have received this power. The action of these four states is, therefore, all the more striking. It might be fair to conclude that legislatures are coming to realize the absurdity of expecting three men, chosen without regard to their fitness for their duties, to assume as their first task a problem which

it has taken railroad experts years to solve even approximately. If such a schedule ever comes out of the hands of a commission in workable form suited to the industrial needs of the state, it must be regarded as a happy accident.

In all four acts the railroads are required to file with the commission their schedules of rates together with their various rules and regulations. In Indiana these are to be furnished only on demand in a matter under investigation by the board; in the other states, within a definite time after the organization of the commission. These schedules having been filed with the commission, no change of any kind can be made in them in Wisconsin, and no increase in Indiana, without ten days' notice; in Kansas the adoption of a new schedule by a road must be reported to the board within ten days. In Indiana the board may alter these rates of the railroads only upon complaint, but in the other three states the board may proceed upon its own motion whenever it deems the matter of sufficient importance. In Kansas the law creates the office of attorney of the board, who, besides being the prosecuting officer of the board, is required to give notice and file complaint with the board whenever he believes a rate to be unjust.

In all the states except Kansas the rates fixed by the commission are absolute; in Kansas it is unlawful to raise without permission the rate which the commission has prescribed, but a rate may be lowered if the benefit of the decrease is enjoyed by all shippers. This power to prescribe absolute rates is given to the boards for the purpose of preventing discrimination, which is generally regarded as a more serious and prevalent evil than excessive rates. Power to prescribe a maximum rate has never reached effectively the fundamental difficulty in the railroad situation.

In Indiana the commission has power to approve of group rates, and the Wisconsin law permits all forms of commodity, concentration and special contract rates under the regulation of the commission, which guarantees their enjoyment to all shippers alike. It has been the contention of the railroads and the large shippers that the tendency of government made rates is toward an absolute level of equality, with no adequate con-

sideration of situation, markets and local conditions. These provisions for special rates are intended to meet this difficulty. It is doubtful whether the danger of the insistence by a commission upon the "distance tariff" is as great in the case of a state commission as in that of a national body. Experience shows that the commissions of the several states are inclined to guard jealously the interests of their home industries without regard to those of neighboring states and to grant such rates, however special or peculiar, as will secure this end. A national commission, on the other hand, with no local interest, will be inclined to adopt distance as the important factor in the determination of a rate, because it will be the easiest method of settling difficult traffic problems and because it will appear to promote the largest justice.

Although the jurisdiction of these commissions is limited to state boundaries, the four laws all contain a provision intended to protect shippers against excessive or inequitable interstate rates, a provision which is also found in a few of the earlier laws. This clause provides for the filing of a complaint with the commission and the reference of the complaint to the offending road, as in the case of unjust state rates. If the roads disregard the notice sent them by the commission, the Interstate Commerce Commission is applied to for relief. This carries out the suggestion of section 13 of the Interstate Commerce Act, which provides that the commission "shall in like manner investigate any complaint forwarded by the railroad commissioner or the railroad commission of any state or territory at the request of such commission or commissioner." This excellent plan secures a complainant before the Interstate Commerce Commission who has no personal interest in the outcome, is well informed, capable of estimating the importance of a grievance and of presenting it in an effective way, undeterred by fears of personal injury or annoyance. A cordial coöperation of state and national commissions, which the annual conventions of commissioners have done much to promote, will aid greatly to ensure a successful administration of the law, for it will remove the difficulty which arises from conflicting jurisdictions.

Discussion of proposed changes in the Interstate Commerce law has to a very great extent centered in the form of procedure to be followed, and the relation of the commission to the courts, especially the question whether a rate established by the commission shall remain in force until passed upon by the courts. It is of interest, therefore, to turn to these clauses in the new state laws and examine their attempted solution of this troublesome problem. In Wisconsin appeal may be taken to the court from the order of the board on questions of law, that is, to determine whether the order is reasonable, but this does not operate to stay the order. If the railroad elects to pray for an injunction against the operation of the commission's order, such an injunction may not issue until after notice and hearing. In Kansas the railroad that appeals to the court from the order of the board is not liable for any violation of the board's order pending the court's decision. In Washington the plan has been adopted which was so many times proposed in the testimony before the Elkins Committee, providing that if the court is of the opinion that the order of the commission is unreasonable or unlawful, it may suspend the order pending litigation, in which case the court shall require a bond from the railroad covering all damages caused by delay in the enforcement of the order, all penalties that would attach under the law and all compensation for sums paid by shippers in excess of the rates ordered by the commission. Indiana has attempted to solve the difficulty in much the same way, but with greater solicitude for the individual shipper and passenger. The court may suspend the commission's order pending review, provided a bond is filed to cover damages, penalties and over-payments, as in the case of Washington; but the law further provides that the railroad executing such a bond shall issue to each shipper and passenger a certificate showing the rate charged and containing a promise to repay the difference between this rate and the commission's rate, if the order of the commission is upheld. If the court sustains the commission, these certificates become payable on demand. This cumbersome scheme was the compromise plan which resulted from the three days' conference between shippers and railroads. It

would seem probable that its success will come, if at all, from the fact that the roads will be inclined to accept the findings of the commission rather than assume the burden of clerical detail which a contest in the courts will involve. The execution of a bond by the railroad has an appearance of fair dealing about it that has won for the plan much support, but its weakness from the standpoint of the public interest lies in the fact that the persons injured by an excessive or unjust rate are often not the shippers at all, but the consumers, who are not parties to the controversy and are not in any way protected or indemnified by the bond. The excess of the rate has been absorbed into the price which they have paid and has often disappeared before the court proceeding has been instituted. It is this very important fact, so often overlooked, which justifies the state in conferring upon its commission the power to investigate complaints as well as to hear them, to proceed "upon its own motion." Only through this process does the great body of the people of the state who are suffering from unjust rates have any standing in actions against the railroads.

In the solution of the question as to the value to be placed by the court upon the commission's findings, the Indiana law provides that the court shall hear the appeal upon the transcript of testimony from the previous hearing. In the Washington law the complainant before the board, if dissatisfied with the board's decision, may appeal to the court and the case is then tried *de novo* without jury. The Wisconsin law provides that if upon trial of the action the court finds that evidence has been introduced by the plaintiff different from or additional to that offered in the hearing before the commission, it shall stay the proceeding for fifteen days and transmit a copy of the evidence to the commission. The commission may then rescind or amend its original order in the light of the new evidence and report to the court within ten days. This Wisconsin plan was evidently suggested by the rough manner in which the courts have handled the findings of the Interstate Commerce Commission. Its working will be watched with the greatest interest and may be worthy of adoption into our national law. It makes the record of the commission final.

Annual reports of the railroads to the commission are required in the usual form. The Wisconsin law introduces the wise provision that the blanks prepared for reports to the commission shall conform as nearly as possible to the Interstate Commerce blank. This practice is being followed voluntarily by many commissions, but a legal provision requiring it has a tendency to hasten a most desirable consummation, when state and national reports will be drawn up on the same forms, and be capable of more intelligent comparison and study. The Wisconsin law also contains the following provision:

> Every railroad shall . . . file with the commission a verified list of all railroad tickets, passes and mileage books, issued free or for other than actual *bona fide* money consideration at full established rates during the preceding year, together with the names of the recipients thereof, the amounts received therefor and the reasons for issuing the same.

It is to be regretted that there is slight probability that such information will be forthcoming, for the facts requested would brighten materially the pages of the commission's annual report. It is very doubtful, however, whether the railroads will be able to find this information when it is wanted.

All the laws include in their scope private car lines, sleeping car companies and express companies as well as railroads proper. It is to be hoped that the inclusion of express companies will be taken more seriously than has yet been the case with any governmental agency. Street and interurban railways are excluded in Indiana and Washington, and street railways in Kansas and Wisconsin. Before long, the interurban roads, at least, will have to be subjected to more vigorous control, and it seems reasonable to place them under the jurisdiction of the state railroad commissions, as has already been done in a few states. Kansas, in connection with its legislation in opposition to the Standard Oil Company, gives to its railroad commission general supervision of the transportation of oil by pipe-lines, which are made common carriers. The commission is authorized to prescribe maximum rates for the transportation of oil.

Much might be said in criticism of our state railroad com-

missions. It is a fair question whether in some states they have not done more harm than good. Their apparent inefficiency is, however, in most cases to be attributed to their limited jurisdiction and to the steadily growing importance of interstate commerce over which they have no control, as well as to the fact that much of their most enduring work in harmonizing the relations of shipper and carrier is carried on informally and never comes into public notice. Whether the commissions have justified their creation or not, the people are not prepared to abandon this form of railroad control until something more efficient offers itself. Therefore it is a source of gratification that the most recent legislation of this character should prove to be so conservative and so much in harmony with the best sentiment of the country on railroad questions.

FRANK HAIGH DIXON.

DARTMOUTH COLLEGE.